

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

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WRIT PETITION No :19233 OF 2007

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DATED:11-09-2007

BETWEEN:

Gajula Viswanatham.

..... PETITIONER

AND

The District Collector,
Ongole,
Prakasam District & 2 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Panchayatraj & Rural Development appearing for the respondents.

2. Petitioner seeks a writ of certiorari calling for the records pertaining to O.P.No.1 of 2006 on the file of the District Judge, Ongole, Prakasam District and set aside the same in respect of the Gram Panchayat, Bestavarapeta village and mandal, Prakasam District.

3. It is the case of the petitioner that he is the elected Sarpanch of the Gram Panchayat, Bestavarapet village and mandal, Prakasam District in the elections conducted on 06-08-2006. 3rd respondent herein also contested the said election and he has been defeated. There are eight more candidates who have contested the election for the post of Sarpanch but the petitioner alone has been declared as Sarpanch. 3rd respondent filed Election Petition No.13 of 2006 on 04-09-2006 after expiry of the period of limitation and the said Election Petition is pending on the file of the Election Tribunal-Junior Civil Judge, Giddalur.

4. It is stated that prior to filing the said Election Petition, 3rd respondent herein filed O.P.No.1 of 2006 on the file of the District Judge, Ongole on 22-08-2006 to declare the election of the petitioner herein as invalid and for consequential permanent injunction restraining him from functioning as

Sarpanch of the said Besthavaripet Gram Panchayat by duly declaring the 3rd respondent herein as elected Sarpanch. The said O.P.1/2006 has been filed under Section 22 of the A.P.Panchayat Raj Act, 1994 (for brevity, 'the Act'), on the ground that the petitioner incurred disqualification under Section 19(2) (i) of the Act, contending that the petitioner herein did not pay the surcharge amount as demanded in Ls.No.256, dated 27-10-2004, by the Audit Officer, State Audit, Ongole.

5. Learned counsel appearing for the petitioner submits that having filed O.P.1/2006 on the file of the District Judge, Ongole, in the month of August, 2006, without disclosing the same, 3rd respondent filed Election Petition No.13 of 2006 in the month of September, 2006, i.e., a month later after expiry of period of limitation to file Election Petition. However, O.P.1/2006 filed under Section 22 of the Act is not maintainable as the procedure contemplated under

Section 22 of the Act has not been followed. It is stated that under Section 22 of the Act if any person elected as a Sarpanch disqualified under Section 19 of the Act by any voter or authority, has to give an intimation of such allegation to the District Panchayat Officer and if there is any doubt with regard to disqualification the aggrieved person has to apply to the District Court having jurisdiction over the area for appropriate decision.

6. It is stated that the procedure contemplated under Section 22 of the Act has not been followed in the instant case. Having lost the election, 3rd respondent herein straightaway filed the Election Petition under Section 22 of the Act. It is further stated that the O.P. contemplated to file under Section 22 of the Act cannot be

termed as an Election Petition. Election Petition has to be filed before the District Munsif alone but not before the District Judge. It is stated that neither the O.P. nor the Election Petition filed by the 3rd respondent is maintainable.

7. Having regard to the facts and circumstances, I am of the opinion that it is for the petitioner to take preliminary objection before the concerned Courts by filing proper application and if such application is not decided it is open for the petitioner to seek appropriate remedy, but it is not just and proper to seek a writ of certiorari in this Writ Petition.

8. Accordingly, writ Petition is dismissed with a liberty to take appropriate action as indicated above. There shall be no order as to costs.

V.ESWARAIAH,J

11th September, 2007.

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